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A Survey of Important Decisions of the Minnesota Supreme Court: 1994-1995: Constitutional Law

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II. CONSTITUTIONAL LAW

A. *Temporary Sobriety Checkpoint Roadblocks*

The use of temporary sobriety checkpoints to stop cars in an effort to detect alcohol-impaired drivers is now a violation of the Minnesota Constitution. In *Ascher v. Commissioner of Public Safety*,[1] the Minnesota Supreme Court addressed the issue of whether a temporary sobriety checkpoint roadblock constituted an unreasonable search and seizure under the Minnesota Constitution.[2] The court held that absent objective, individual articulable suspicion, sobriety checkpoint roadblocks are violative of the Minnesota Constitution as unreasonable searches and seizures.[3]

From 10:00 p.m. on August 14, 1992, to 2:00 a.m. on August 15, 1992, the Burnsville Police Department and the Minnesota State Patrol conducted a temporary sobriety checkpoint roadblock at the intersection of Nicollet Avenue and Highway 13 in Burnsville, Minnesota.[4] The checkpoint was initiated as an effort to apprehend alcohol-impaired drivers.[5] Officers interviewed each driver at a "pre-screen area" near the intersection checking for indicia of intoxication.[6] If the interviewing police officer suspected a possible violation, the driver was then taken to a "final screen area" for further investigation including a sobriety test and computer check for outstanding warrants.[7] Representatives of two local television stations were also present at the "final screen area" filming segments of the screening procedure in an effort to deter future violators.[8]

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1. 519 N.W.2d 183 (Minn. 1994).
2. *Id.* at 183-84.
3. *Id.* at 187.
4. *Id.* at 184. Although signs were placed alongside the road warning motorists of the approaching checkpoint, there was no way for motorists to bypass it. *Id.*
5. *Id.* Originally, police officers at the checkpoint were directed to stop every car entering the checkpoint. However, due to unusually heavy traffic, ranking officers decided to stop every fourth car. *Id.*
6. *Id.* The average delay experienced by the stopped motorists was estimated at under two minutes. *Id.*
7. *Id.*
8. *Id.*

One of the drivers stopped at the sobriety checkpoint was Ricky Ascher.[9] Ascher was sent to the "final screen area" upon a Burnsville police officer's observation that Ascher displayed physical indicia of intoxication.[10] After performing several field sobriety tests and taking a preliminary breath test, Ascher was arrested and taken to the police station where he refused to submit to an intoxilyzer test.[11]

Ascher subsequently sought review of his driver's license revocation in connection with the arrest.[12] The Dakota County District Court sustained the revocation.[13] The Minnesota Court of Appeals reversed the order of the district court concluding that the media's presence at the sobriety roadblock rendered the stop impermissibly intrusive under the Fourth Amendment to the U.S. Constitution and that the roadblock violated Article I, Section 10 of the Minnesota Constitution.[14] The Minnesota Supreme Court affirmed.[15]

In reaching its decision, the Minnesota Supreme Court recognized that a substantial segment of our society may be willing to submit to a short term invasion of their privacy to keep alcohol-impaired drivers off the road.[16] However, the court refused to base its decision on what the court described as public "consensus that a particular law enforcement technique serves a laudable purpose."[17] Additionally, the court refused to examine the effectiveness of such a roadblock.[18] Instead, the court based its decision on Minnesota's long-recognized requirement that police possess an objective, individualized, articulable suspicion of criminality prior to subjecting a motorist to an

9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.* at 183.
13. *Id.*
14. Ascher v. Commissioner of Pub. Safety, 505 N.W.2d 362 (Minn. Ct. App. 1993).
15. *Id.* at 183.
16. *Id.* at 186.
17. *Id.* at 186-87 (citing Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 459 (1990) (Brennan, J., dissenting)).
18. *Id.* at 185. As a result of the roadblock, 2.3% of the stopped motorists were issued citations or arrested including fourteen arrests for DWI, four arrests for DAR/DAS, one arrest for open bottle, one arrest for possession of cocaine, one arrest for driving an unregistered vehicle, and one arrest of a fugitive. *Id.* at 184.

investigative stop.[19]

By exercising its independent authority to interpret the Minnesota Constitution, the court circumvented the U.S. Supreme Court decision in *Michigan Department of State Police v. Sitz* which held that the use of temporary roadblocks is not violative of the Fourth Amendment.[20] In fact, the court relied heavily on Justice Brennan's fervent dissent in *Sitz* in striking down the use of temporary roadblocks as unconstitutional.[21] In *Sitz*, Justice Brennan chided the majority for ignoring previous court decisions requiring the government to prove reasonable suspicion even in minimally-intrusive seizure situations and underscored the concern that if temporary roadblocks were allowed the public would be vulnerable to "arbitrary or harassing conduct by the police."[22]

The court's decision in *Ascher* properly protects the personal liberties found in the Minnesota Constitution to a greater extent than required by the U.S. Constitution. Although harmonious interpretations of state and federal constitutional provisions may often be favorable, *Ascher* is representative of a situation where departure from an interpretation of a federal provision resulted in an enhanced right of Minnesota citizens to be free from arbitrary and harassing police conduct.

B. *Term Limits of Elected Officials Relative to Home Rule Charter Cities*

The Minnesota Supreme Court, in *Minneapolis Term Limits Coalition v. Keefe*,[23] considered the constitutionality of a proposed amendment to the Minneapolis city charter limiting the terms of local elected officials.[24] The court held that the

19. *Id.* at 187. As an example of a recognized exception to the requirement of individualized suspicion the court cited a situation where development of individualized suspicion by police was impracticable, the suspicionless interference did not outweigh the private citizens' interest in freedom from invasion of privacy and the police attained a higher arrest rate. *Id.* at 186.

20. *Id.* at 185; *see* Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 454 (1990) (suggesting that the minimal invasion experienced by the brief detention of a motorist at a temporary roadblock would only be violative of the Fourth Amendment when there is no empirical evidence that the roadblock was effective).

21. *Ascher*, 519 N.W.2d at 185.

22. *Id.* (citing *Sitz*, 496 U.S. at 457-58).

23. 535 N.W.2d 306 (Minn. 1995).

24. *Id.* at 307.

proposed amendment to the Minneapolis city charter would violate Article VII, Section 6 of the Minnesota Constitution[25] because a term limit constituted an eligibility requirement rather than a qualification for office.[26]

On August 15, 1994, the Minneapolis Term Limits Coalition, an unincorporated association, filed a petition with the Office of Elections and Voter Registration in an attempt to place a proposed charter amendment on the November 8, 1994, general election ballot.[27] The proposed charter amendment limited the terms of the Minneapolis mayor and city council to eight years.[28] On August 31, the director of the Office of Elections

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25. Article VII, Section 6 of the Minnesota Constitution provides as follows:

> Sec. 6. Eligibility to hold office. Every person who by the provisions of this article is entitled to vote at any election and is 21 years of age is eligible for any office elective by the people in the district wherein he has resided 30 days previous to the election except as otherwise provided in this constitution, or the constitution and law of the United States.

MINN. CONST. art. VII, § 6.

26. *Minneapolis Term Limits Coalition*, 535 N.W.2d at 309.

27. *Id.* at 307. Pursuant to Article XII, Section 5 of the Minnesota Constitution, a home rule charter amendment may be proposed by a petition signed by five percent of the voters of the local government unit, by a charter commission, or "by any other manner provided by law." *Id.* at 308.

28. The proposed amendment to the city charter stated as follows:

> SECTION 1. TERM LIMITS. Notwithstanding any other provision of law to the contrary, no person may file to be a candidate for election to a term that would cause the person to serve more than eight consecutive years in the office of Mayor or eight consecutive years in the office of City Council. Service prior to the passage of this ordinance shall not count in determining length of service.
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> SECTION 2. INSTRUCTION. The city clerk is hereby instructed to contact, exactly as he would do if so instructed by a resolution of the Mayor or City Council, in writing, within 30 days after adoption of this ordinance, all state legislators and members of the United States Congress who have any constituents within the city limits and instruct them it is the resolute desire of the citizens of the city of Minneapolis that term limits be enacted by the legislature of Minnesota and the United States Congress, and that the maximum consecutive tenure in office be no more than six years (three terms) in the United States House or [sic] Representatives, no more than twelve years (two terms) in the United States Senate, and no more than ten consecutive years in either the Minnesota State Senate or State House. The people of the city of Minneapolis hereby instruct all state and federal legislators representing any part of this city, to individually do their utmost to promote and pass binding legislation or a constitutional amendment enacting the term limits specified in this section. The instruction and resolution shall remain in effect for as many years as required to effect these changes, and shall so state on its face.
>
> SECTION 3. SEVERABILITY. If any part of this petition shall be declared unconstitutional by a court, all others shall remain in full force and effect.

Id. at 307.

and Voter Registration certified that the petition fulfilled the requisite number of registered voter signatures.[29]

On September 12, 1994, the entire Minneapolis city council decided not to place the proposed term limit amendment on the ballot.[30] The city council based its decision on a recommendation of the Minneapolis Charter Commission that the proposed amendment not be placed on the ballot and the opinion of the Minneapolis city attorney that the amendment would violate the Minnesota Constitution.[31] The mayor signed the resolution of the city council two days later.[32]

In *Minneapolis Term Limits Coalition*, the court admitted that the technical requirements necessary to submit the amendment to qualified voters were met.[33] However, the court reasoned that by well-established rule a city council may refuse to place a proposed amendment on the ballot when the amendment is manifestly unconstitutional.[34]

In analyzing the constitutionality of the proposed amendment, the court looked to the express language and subsequent interpretation of Article XII, Section 6 of the Minnesota Constitution.[35] Article XII, Section 6 sets forth the eligibility requirements for holding public office, including a minimum age restriction and a residency requirement.[36] In *Pavlak v. Growe*,[37] Article XII, Section 6, was interpreted as establishing universal eligibility standards for public office.[38] The *Pavlak* court construed Article VII, Section 6 of the Minnesota Constitution as providing minimal, immutable requirements of eligibility for elected officials that could not be made more restrictive by legislative action in the absence of express authorization by another constitutional provision.[39] The court then distinguished a "qualification" for office from an "eligibility require-

29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.*; *see, e.g.*, Davies v. City of Minneapolis, 316 N.W.2d 498, 504 (Minn. 1982) (upholding a Minneapolis City Council's refusal to call an election where the proposed charter amendment was manifestly unconstitutional).
35. *Minnesota Term Limits Coalition*, 535 N.W.2d at 308.
36. *See supra* note 25.
37. 284 N.W.2d 174 (Minn. 1979).
38. *Id.* at 176.
39. *Id.*

ment for office."[40] The court defined a qualification as "an element of performance requiring a particular ability on the part of the person seeking the position, such as physical agility or the attainment of a particular level of education."[41] Conversely, the court suggested that eligibility requirements, "have nothing to do with one's ability to perform the duties of the office in question."[42] Finally, the court looked to the language of Article XII, Section 3 of the Minnesota Constitution, which provides: "[the] legislature may provide by law for the creation, organization, administration, consolidation, division and dissolution of local government units . . . and appointive officers including qualification for office."[43] The court concluded that because term limits have nothing to do with the person's ability to perform the duties of the job, term limits are eligibility requirements, and thus are not authorized under Article XII, Section 3 as an exception under Article VII, Section 6 guaranteeing universal eligibility.[44]

C. *Nude Dancing and Freedom of Expression*

Minnesota cities may now impose restrictions on nude dancing in liquor establishments without violating the free speech guarantees of the Minnesota Constitution.[45] In *Knudtson v. City of Coates*,[46] the Minnesota Supreme Court considered the constitutionality of a Coates City Ordinance prohibiting nude dancing in liquor establishments.[47] The court held that the state's power to regulate liquor sales under the Twenty-first Amendment to the U.S. Constitution does not limit the freedom

40. Minneapolis Term Limits Coalition v. Keefe, 535 N.W.2d 306, 309 (Minn. 1995). Although the court noted a recent U.S. Supreme Court decision supporting the notion that a term limit is a qualification and the terms eligible and qualification are interchangeable, the court confined its analysis to the unique language of the Minnesota Constitution referring to eligibility in Article VII, Section 6, but "qualifications for office" in article VII, section 3. *Id.* at 309 n.2.

41. *Id.* at 309.

42. *Id.*

43. MINN. CONST. Art. XII, § 3.

44. *Minneapolis Term Limits Coalition*, 535 N.W.2d at 309.

45. Article I, Section 3 of the Minnesota Constitution provides in pertinent part, "[A]ll persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right." MINN. CONST. art. I, § 3.

46. 519 N.W.2d 166 (Minn. 1994).

47. *Id.* at 168.

of expression guarantees of the Minnesota Constitution.[48] The court also held that a city ordinance barring nude dancing in a licensed liquor establishment does not violate the free speech provision of the Minnesota Constitution when the ordinance minimally impairs the freedom of expression by setting regulations reasonable in time, place and manner.[49]

In November, 1991, Eileen Knudtson, the owner of Jake's bar, applied to the City of Coates for a liquor license.[50] One month later, Knudtson obtained a liquor license which was effective until April of 1992.[51] In January 1992, shortly after the bar opened, Knudtson began providing nude entertainment at the bar.[52] In April 1992, when her liquor license was up for renewal, Knudtson applied to renew her license.[53] In response to her renewal application, Knudtson received a letter from the city attorney informing her of the date the renewal application would be considered and indicating that the City Council was concerned that the bar was in violation of the city's liquor ordinance.[54] After a public hearing, the city decided not to renew the Knudtson's liquor license based on her violation of the city's liquor ordinance prohibiting nude dancing in licensed liquor establishments.[55]

The court in *Knudtson* quickly dismissed the argument that the Twenty-first Amendment, which allows the regulation of the

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48. *Id.*
49. *Id.* at 169.
50. *Id.* at 167.
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.* The Coates City Ordinances sections 603.01 and 603.02 (1978) provide as follows:

> Sec. 603.01, PURPOSE. The City of Coates does hereby ordain that it is in the best interest of the public health, safety and general welfare of the people of the City of Coates that certain types of entertainment, as hereinafter set forth, be prohibited upon the premises of licensed liquor and beer establishments so as to best protect and assist the owners and operators and employees thereof, as well as the patrons thereof and public in general. Further, the City does ordain that the standards set herein are reflective of the prevailing community standards in the City of Coates.
>
> Sec. 603.02, CERTAIN ACTS PROHIBITED. It shall be unlawful for any licensee to permit or to suffer any person or persons from being upon the licensed premises when such person does not have his or her buttocks, anus, breast and genitals covered with a non-transparent material.

Knudtson, 519 N.W.2d at 167 n.2.
55. *Knudtson*, 519 N.W.2d at 167.

sale of liquor, also allows regulation of nude dancing in liquor establishments that would otherwise be protected speech.[56] Instead, the court viewed the critical issue as whether the state by regulating the use and sale of liquor may restrict nudity in bars without violating the freedom of speech guarantees of the Minnesota Constitution.[57]

The court reasoned that the City of Coates' adoption of the ordinance prohibiting nude dancing was a reasonable exercise of the City's police powers to protect "the public health, safety, and general welfare" of the community.[58] Although the nude dancing at Jake's did not incite criminal activity so as to implicate the safety of the public, the court reasoned that the city council may have adopted the ordinance because public bars providing nude dancing may be "offensive to community standards of public decency," may communicate to children and teenagers that nude dancing is socially and morally acceptable and may provide a "subliminal endorsement for unlawful sexual harassment."[59]

In reaching its decision, the court admitted that nudity is a widespread phenomenon in video, advertising and movies, but distinguished this type of adult entertainment with nude dancing in bars because the latter results in "physical immediacy for the onlooker."[60] The court found that the Coates ordinance was constitutional under the Minnesota Constitution because the hours of regulation of both nude dancing and liquor consumption were identical. Furthermore, the court found the ordinance did not altogether prohibit dancing if minimal covering of sexually explicit body parts was provided, and the requirement of minimal coverage of sexually explicit body parts did not interfere with the expression of the dancers' erotic message.[61]

D. Psychopathic Personality Statute

The speculative nature of psychiatric predictions of dangerousness, and the ineffectiveness of current treatment methods for repeat sexual offenders have sparked strong criticism of

56. *Id.* at 168.
57. *Id.*
58. *Id.* at 169.
59. *Id.*
60. *Id.*
61. *Id.*

psychopathic personality statutes.[62] Despite this criticism, the Minnesota Supreme Court in *In re Blodgett*,[63] upheld the constitutionality of Minnesota's psychopathic personality statute.[64] The *Blodgett* court held that civil commitment under the Minnesota psychopathic personality statute does not violate the substantive due process or equal protection rights of a repeat sexual offender.[65]

Blodgett involved the civil commitment of repeat sex offender Phillip Jay Blodgett. Blodgett had a long history of violence and sexual misconduct.[66] In 1982, at the age of sixteen, Blodgett was adjudicated a delinquent stemming from charges of sexual contact with his brother.[67] Within a year, Blodgett was charged with misdemeanor battery of a social worker.[68] In May 1985, Blodgett was charged and found guilty in Washington County District Court of violating a domestic abuse restraining order.[69] Four months later, Blodgett broke into the home of an ex-girlfriend's parents, entered the room where his ex-girlfriend was sleeping, and sexually assaulted her.[70] In May 1987, Blodgett sexually assaulted a woman during a failed attempt to steal a car from a supermarket parking lot.[71] In June 1987, while on

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62. *See, e.g.*, C. Peter Erlinder, *Minnesota's Gulag: Involuntary Treatment for the "Politically Ill,"* 19 WM. MITCHELL L. REV. 99 (1993). This criticism has led half of the states that had psychopathic personality statutes to repeal them. *In re* Blodgett, 510 N.W. 910, 919 n.3 (Minn. 1994).

63. 510 N.W.2d 910 (Minn. 1994).

64. *Id.* at 910. Minnesota's psychopathic personality statute defines the psychopathic personality as follows:

> [T]he existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any such conditions, as to render such person irresponsible for personal conduct with respect to sexual matters and thereby dangerous to other persons.

MINN. STAT. § 526.09 (1992).

65. *Blodgett*, 510 N.W.2d at 910.

66. *Id.* at 911.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.* Blodgett committed the crime only three hours after his release from Washington County Jail where he had been serving time for burglary and obstruction of the legal process. On January 16, 1986, Blodgett pled guilty and was sent to prison for first degree burglary for entering a dwelling with intent to commit criminal sexual conduct. *Id.*

71. *Id.* Blodgett seized the woman and forced her into the front seat of her car. He then placed his hand in her mouth, hit her on the side of the head, and fondled

supervised release from a halfway house, Blodgett raped a sixteen year old girl.[72] Blodgett was sent to prison upon a conviction of two counts of criminal sexual conduct in the second degree.[73]

Prior to Blodgett's release, he was evaluated by Dr. Richard Friberg as required under the Department of Corrections' risk assessment and release procedures.[74] Upon completion of his evaluation, Dr. Friberg sent a letter to the Washington County Attorney opining that Blodgett had met the criteria for commitment under the psychopathic personality statute.[75] In response to Friberg's letter, the Washington County Attorney filed a petition for commitment.[76] At the initial hearing, evidence was received showing Blodgett was abused as a child, had an addiction to drugs and alcohol, had elevated Minnesota Multiphasic Personality Inventory scores, and had refused all of the treatment programs he had been offered.[77] Five psychologists testified at Blodgett's commitment hearing.[78] All five psychologists agreed that Blodgett was dangerous, had an antisocial personality disorder, and was chemically dependent.[79] However, the psychologists remained divided as to whether Blodgett met the statutory definition of a psychopathic personality.[80] The psychologists' inconsistent conclusions relative to whether Blodgett fit the definition of psychopathic personality were based on the fact that each psychologist possessed a different understanding of the meaning of psychopathic personality.[81] Some of the psychologists based their conclusions strictly on the

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her genital area. When the woman screamed for help, Blodgett threatened to kill her. At the time the crime was committed, Blodgett was enrolled in a pre-release program at Lino Lakes that allowed Blodgett to leave the prison during the day, but required him to return at night. *Id.*

72. *Id.*

73. *Id.*

74. *Id.* The purpose of the evaluation is to identify those offenders that may be candidates for civil commitment as psychopathic personalities or who may pose a danger to the public. *Id.* at 911 n.1.

75. *Id.* at 911.

76. *Id.* at 912.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* Of the five experts testifying, four determined that Blodgett met the statutory definition of psychopathic personality. *Id.*

81. *Id.*

express language of the psychopathic personality statute, while others incorporated case law interpreting the statutory language to reach their determinations.[82]

Blodgett was subsequently committed to the Minnesota Security Hospital (MSH) upon the court's finding that Blodgett was a psychopathic personality.[83] Shortly after Blodgett's commitment, the MSH staff filed an evaluation report as required pursuant to Minnesota Statutes sections 526.10, subdivision 1, and 253B.18, subdivision 2 (1992).[84] The evaluation report opposed Blodgett's commitment and set forth a diagnosis of polysubstance abuse and antisocial personality.[85] On January 6, 1992, a final hearing was held.[86] At the hearing, Blodgett moved to dismiss the proceedings on the basis that the psychopathic personality statute was unconstitutional.[87] Several psychiatrists testified at the hearing, including MSH senior staff psychiatrist, Dr. Michael Farnsworth.[88] Farnsworth objected to Blodgett's commitment contending that whatever treatment Blodgett would receive at MSH would amount to nothing more than a "'sham' or 'placebo' treatment."[89]

On April 2, 1992, the trial court found that Blodgett met the criteria for commitment as a psychopathic personality and that there were no reasonably less restrictive alternatives available.[90] The Minnesota Court of Appeals upheld the trial court's findings that Blodgett was a psychopathic personality and that his commitment was constitutional.[91] Blodgett petitioned the Minnesota Supreme Court for review challenging the constitutionality of his commitment alleging substantive due process and equal protection violations.[92]

The supreme court in its review first examined the history of the psychopathic personality statute originally enacted in

82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.*
86. *Id.*
87. *Id.*
88. *Id.*
89. *Id.*
90. *Id.*
91. *Id.*
92. *Id.*

1939.[93] In its original form, the statute related to insane persons instead of the dangerously insane.[94] Thirty years later, the statute was amended to include "persons mentally ill and dangerous to the public."[95]

The statute was challenged as unconstitutionally vague in *State ex rel. Pearson v. Probate Court of Ramsey County*.[96] In response to the contention of vagueness, the *Pearson* court narrowed the statute so as to limit its reach to habitual sexual offenders who display an "utter lack of power to control their sexual impulses and . . . are likely" to commit future attacks.[97] Blodgett contended that *Pearson* was not controlling in light of a number of recent U.S. Supreme Court decisions restricting a state's power to civilly confine individuals.[98] Specifically, Blodgett asserted that under the U.S. Supreme Court decision in *Foucha v. Louisiana*, his fundamental right to "live one's life free of physical restraint" had been infringed.[99] In *Foucha*, the United States Supreme Court held that a Louisiana civil commitment statute violated the substantive due process rights of an individual when the individual is committed indefinitely on the basis of dangerousness alone.[100]

The Minnesota Supreme Court stated that Blodgett's contention was based on the mistaken notion that *Foucha* overruled *Pearson* without expressly saying so.[101] The court

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93. *Id.* at 912-13.

94. *Id.* at 913.

95. *Id.*

96. 205 Minn. 545, 287 N.W. 297 (1939), *aff'd* 309 U.S. 270 (1940).

97. *Id.* at 555, 287 N.W. at 302. The *Pearson* court narrowed the psychopathic personality statute by defining a psychopathic personality as follows:

> [T]hose persons who, by a habitual course of misconduct in sexual matters, have evidenced an utter lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of their uncontrolled and uncontrollable desire.

Id. Based on the additional criteria enunciated by the *Pearson* court, the *Blodgett* court held that the statute was not unconstitutionally vague under the Fourteenth Amendment. *Blodgett*, 510 N.W.2d at 913. On appeal, the U.S. Supreme Court affirmed the Minnesota Supreme Court holding in *Pearson* that the psychopathic personality statute was not unconstitutionally vague. State *ex rel.* Pearson v. Probate Ct. of Minneapolis, 309 U.S. 270, 274 (1940) *aff'g* 205 Minn. 545, 287 N.W. 297 (1939).

98. *Blodgett*, 510 N.W.2d at 914; *see* Foucha v. Louisiana, 504 U.S. 71 (1992); *see also* Addington v. Texas, 441 U.S. 418 (1979); Jackson v. Indiana, 406 U.S. 715 (1972).

99. *Blodgett*, 510 N.W.2d at 914; *see Foucha*, 504 U.S. at 86.

100. *Foucha*, 504 U.S. at 86.

101. *Blodgett*, 510 N.W.2d at 914.

determined that *Pearson* was not overruled by *Foucha*, but instead *Pearson* was a subset of *Foucha*'s mentally ill and dangerous category or an additional category.[102] The court reasoned that even though the psychopathic personality was not currently classified as a mental illness, a psychopathic personality is certainly more than "mere social maladjustment."[103] The court concluded that a psychopathic personality is "an identifiable and documentable violent sexually deviant condition or disorder."[104]

The court then applied the *Pearson* test to determine whether Blodgett fit within the definition of psychopathic personality.[105] Application of the Pearson test involves the court's consideration of a number of factors including:

> [T]he nature and frequency of the sexual assaults, the degree of violence involved, the relationship (or lack thereof) between the offender and the victims, the offender's attitude and mood, the offender's medical and family history, the results of psychological and psychiatric testing and evaluation, and such other factors that bear on the predatory sex impulse and the lack of power to control it.[106]

Upon considering the *Pearson* factors, the court determined that Blodgett was a psychopathic personality.[107]

Additionally, Blodgett argued that civil commitment as a psychopathic personality condition will result in life-long preventive detention because the condition is not treatable.[108] Although the court recognized that treatment is problematic,[109] the court stated that the lack of documentation of successful treatment did not diminish the state's compelling interest in protecting the citizens of the state.[110] The court reasoned that as long as the individual is offered treatment with frequent

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102. *Id.*

103. *Id.* The court noted that the third edition of the American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* describes the behavior relative to antisocial personality disorder as sometimes including sexual promiscuity. *Id.* at 915 n.7.

104. *Id.* at 915.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.* at 916.

109. The court stated that it was unclear whether treatment for psychopathic personalities "never works." *Id.*

110. *Id.*

reviewal, the individual's due process rights are met.[111]

Finally, Blodgett asserted that his equal protection rights had been infringed based on the disparate treatment between sexual offenders who have completed their sentences and other equally dangerous criminals who were not medically recognized as mentally ill.[112] Because the fundamental right of liberty was involved, the court applied the strict scrutiny test requiring a compelling governmental interest.[113] The court quickly determined that the safety of the public constituted a compelling governmental interest.[114] In reaching its decision, the court admitted the lack of scientific knowledge relative to repeat sexual offenders, however the court asserted that the criminal justice system can deal with repeat sexual offenders in two ways: by enhanced criminal sentences or civil commitment.[115] The court noted that it had already upheld the Legislature's enactment of enhanced criminal sentences, and it thus upheld the civil commitment statute.[116]

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111. *Id.*

112. *Id.* Amicus, Minnesota Civil Liberties Union, argued in its brief that committing psychopathic personalities and not other recidivist criminals, including arsonists and murderers results in inequitable treatment. *Id.* at 917.

113. *Id.*

114. *Id.* at 918.

115. *Id.* at 917.

116. *Id.* at 918.